

POLICE/SHERIFF'S DEPARTMENT	RULES AND REGULATIONS
SUBJECT: Liability Protection	NUMBER: 1-15
EFFECTIVE DATE: July 1, 1999	REVIEW DATE:
AMENDS/SUPERSEDES: RR 1-15, January 1988	APPROVED: _____ Chief of Police/Sheriff
CALEA STANDARDS: 22.2.7	VLEPSC STANDARDS: PER.03.03

NOTE

This order is for internal use only, and does not enlarge an officer's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third-party claims. Violations of this directive, if proven, can only form the basis of a complaint by this department, and then only in a non-judicial administrative setting.

INDEX WORDS

Civil rights violations
Immunity; from liability
Liability
Liability protection program
Supervisors, liability of

I. POLICY

The department has a liability protection program which protects employees for actions or omissions directly related to their law-enforcement function. Within stated policy limits, this program protects employees from acts or omissions leading to personal injury or death or property destruction which, in turn, could lead to civil action against the employee. Civil litigation can be trying for all employees and the result can be damaging, but litigation may also serve to clarify our roles and responsibilities and aid the department in improving service to the community.

Each employee has an affirmative duty to uphold the law and preserve constitutional guarantees. An employee who witnesses other employees violate a citizen's constitutional rights shall intervene to stop the violation and report it to a supervisor.

[Note: Since the first edition of this model order in 1986, fewer and fewer commercial insurance companies still underwrite municipal law enforcement agencies. Since 1986, the Division of Risk Management, Virginia Department of General Services, has

developed a self-insurance plan for local law enforcement agencies. Contact the Division of Risk Management for details. The statutory authority for this service of the Division of Risk Management is found in Virginia Code § 2.1-526.8:1 and -526.11:1.]

II. PURPOSE

To set forth procedures relating to the police liability protection program. This order is intended to help employees respond to high-risk activities that pose a civil liability risk and to outline responsibilities in the event of a lawsuit.

[Note: The following order applies to municipal law-enforcement agencies. The liability principles which govern municipalities are not identical to those which apply to elected sheriffs.]

III. PROCEDURES - General

A. General

The town maintains a liability program to protect department employees for acts or omissions directly related to their law-enforcement function. Liability protection is provided in a variety of ways, typically including officers' liability coverage, vehicle liability coverage, and self-insurance. Since the exact components of the liability protection program are subject to periodic change through contract expiration and renegotiation, any employee desiring to know the specific components then in effect may contact the chief of police/sheriff.

B. Employees covered

1. All officers, reserve or auxiliary officers, animal control officers, crossing guards, and full-and part-time civilian employees of the department are covered by the liability protection program.
2. For purposes of this order, "employees" refers both to sworn and non-sworn personnel. Actions of either one can lead to liability. In some portions of this order, "officer" is used instead of "employee" where the issue under discussion pertains most directly to enforcement duties.

C. Notification of suit or claims

Any employee who receives notice in any form of actual or impending legal suit or claim, shall, as rapidly as possible, explain the circumstances through command channels to the chief/sheriff. The chief/sheriff shall, in turn, provide appropriate notification to both the county/town manager and the town attorney.

D. Financial liability

No employee shall imply or accept financial liability for loss or damage on behalf of the town/county. Any inquiries concerning financial liability will be referred to the town attorney.

E. Acts not covered

1. An act committed by an employee or an omission of duty which constitutes gross and willful negligence **may not** be covered by the department.
2. Employees are expected to show discretion and good judgment in their work. Some duties are mandated by law, others by custom or tradition. Liability may arise in either case. The department cannot avoid lawsuits; the department can control its liability by demanding strict adherence to the provisions of this manual.
3. Employees are reminded that litigation against them or the department may focus on the degree to which officers followed a policy or custom (the latter defined as "a persistent, widespread practice") which, in itself, was either unconstitutional, illegal, or the cause of an unjustifiable injury. If such a custom or policy is found by the court, the department may be held liable.

IV. PROCEDURES - Liability principles

A. Types of liability

Officers may be held liable for misconduct in any of five ways:

1. Violation of Virginia criminal law;
2. Violation of departmental orders;
3. Tort against a citizen;
4. Violation of federal criminal civil rights statutes, 18 *United States Code* §§ 241 and 242.
5. Violation of federal civil rights law, 42 *United States Code* § 1983.

B. Federal civil rights liability

1. § 1983 is the most important statute governing federal civil rights liability. For purposes of federal civil liability per § 1983, an officer is a person acting under color of law. An officer may be held personally liable for violating citizens' constitutional rights under some conditions.
2. 42 *United States Code* § 1983 reads:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other persons within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured on an action at law, suit in equity, or other proper proceeding for redress."

C. State liability generally

Claims of negligence in the state courts pose liability in a different way than § 1983 above. While federal claims usually allege a constitutional rights violation, in state courts it must be shown that the law-enforcement agency owed a duty to the plaintiff and that a breach of the duty caused an injury. Liability is sometimes found against the law-enforcement agency as "negligent failure to protect" when the agency created a special relationship with the plaintiff by promising to act, and then failing to protect the victim.

D. Supervisory liability

Generally, officers and not their supervisors are liable for their own misconduct. Supervisors are civilly or criminally liable under the following circumstances:

1. When supervisors directly authorize or participate in acts that cause harm.
2. When supervisors know that their subordinates are violating citizens' constitutional rights and condone or approve it, or do not stop it.
3. Failure to discipline subordinates, correct misbehavior or poor performance, or to conduct internal investigations when necessary.

E. Immunity

In court, officers do not automatically receive immunity from lawsuits simply because they acted in good faith. Officers may claim qualified immunity when their actions do not violate clearly established statutory or constitutional rights of which a reasonable officer would have known. In short, officers *must* have an objectively reasonable belief in the constitutionality of their actions. Immunity is not a quality that officers can claim during an investigation. Rather, it is a defense to an accused officer that must be raised in court and considered by a judge.

[Note: The best way to avoid having to raise the issue of qualified immunity is to ensure that officers are adequately trained in key constitutional decisions in searches and seizures, the law of arrest, for example. These constitutional decisions must be reviewed frequently, incorporated in agency directives, and taught repeatedly.]

[Note: Several state statutes address immunity and liability and ought to be examined when developing any policy on liability. For instance, § 15.2-1405 grants members of the governing bodies of any political subdivision immunity from exercising or failing to exercise discretionary or governmental authority, excepting acts of intentional or willful misconduct. Consult your legal advisor or commonwealth's attorney on what constitutes discretionary or governmental acts by public officials. § 18.2-412 affords officers and any other authorized person immunity when trying to disperse a riot or unlawful assembly. Further, managers should consult the Virginia Tort Claims Act under § 8.01-195.1.]

V. PROCEDURES - High-risk incidents

A. High-risk incidents defined

High-risk incidents pose the greatest possibility of generating the most litigation and include use of force, vehicular pursuit and emergency driving, searches and seizures, arrests, failure to render (or improperly rendering) medical assistance, and failure to enforce the law. *[Agencies may wish to list examples of high-risk incidents.]*

B. Response to high-risk incidents

Supervisors and officers shall observe the following procedures at all high-risk incidents:

1. Secure the scene and all evidence.
2. Supervisors shall ensure that timely medical attention is provided to any injured persons at the scene, and shall document the condition of the suspect, what kind of medical help was required, and the apparent health of the suspect before the incident. Similarly, supervisors shall assess the suspect's apparent mental health, document it as well as any signs of overt, aggressive, or even suicidal behavior.
3. Obtain names, addresses of all witnesses at the scene, and obtain statements, if possible.
4. A supervisor shall respond to the scene and direct actions as necessary.
5. If a pursuit has occurred, the supervisor shall document the weather conditions, lighting and visibility, route of the chase, duration of the chase, number of participating vehicles and the names of the officers, and any other relevant information.
6. If an arrest is made, the supervisor may, before booking, independently evaluate the arrest and document its probable cause.

7. Supervisors shall ensure that adequate photographs or videotape shall be taken of the scene, including of witnesses. The suspect shall be photographed at booking.
8. Supervisors shall coordinate and collect reports from all participating officers to a high-risk incident, including reports from personnel of other participating agencies.

VI. PROCEDURES - Responsibilities of employees

- A. Any employee in receipt of a subpoena to testify concerning official business shall immediately notify the chief/sheriff through the chain of command.
- B. Any employee named as a party in a civil action for acts or omissions of duty shall immediately notify the chief/sheriff through the chain of command.

C. Information subject to release

Information that *may* be releasable to a judge in a lawsuit includes personnel records, citizens complaints, internal investigative files related to the incident under litigation; past misconduct or internal investigative files on officers who are being litigated against, departmental orders, and training records.

D. Information not releasable

Information that *may not* be fully releasable includes records of official review boards, internal memos, names of confidential informants, citizens who wish to remain anonymous, and investigative files and records of on-going criminal investigations.

[Note: See also the Virginia Privacy Act and the Virginia Freedom of Information Act for a discussion of records that must be disclosed by law and a list of exempted records. In particular, see §§ 2.1-342 and 2.1-382. Consult with your legal advisor or commonwealth's attorney to determine what constitutes releasable and non-releasable records.]